

IN THE DISTRICT COURT OF MCKINLEY COUNTY
STATE OF NEW MEXICO

SANTA FE PACIFIC RAILROAD COMPANY,
a corporation,

Plaintiff,

v.

No. 8287

DUANE BERRYHILL and NELDA BERRYHILL,
his wife, et al.,

Defendants.

S T I P U L A T I O N

It is stipulated and agreed by and between the Santa Fe Pacific Railroad Company, plaintiff in the above-entitled cause, hereinafter called Santa Fe Pacific, and Duane Berryhill and Nelda Berryhill, his wife, Volten S. Tietjen and Theressa Tietjen, his wife, Adrian Berryhill, also known as Wallace Adrian Berryhill, and Gladdus Tietjen Berryhill, his wife, Jeff Tietjen, also known as Thomas Jefferson Tietjen, and Edna Tietjen, his wife, defendants in the above-entitled cause, hereinafter called Berryhill Defendants, and Josephine Maude Elkins, individually and as the duly appointed, qualified and acting Guardian of the Estates of Jack Lee Elkins, Keith Lowell Elkins, Lynn Embert Elkins, David Phil Elkins and Frederick Vernon Elkins, defendants in the above-entitled cause, hereinafter called Elkins Defendants, as follows:

1. That the property involved in this suit consists of the following:

Tract (1):

Sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, Township 13 North, Range 10 West, New Mexico Principal Meridian, McKinley County, New Mexico, containing approximately 11,532 acres.

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Tract (2):

Lot 3, 4 and S $\frac{1}{2}$ NW $\frac{1}{4}$ section 3, section 5, all that part section 7 lying north and east of the right of way of The Atchison, Topeka and Santa Fe Railway Company, section 9, SW $\frac{1}{4}$ section 13, section 15, all that part section 17 lying north and east of the right of way of The Atchison, Topeka and Santa Fe Railway Company, all that part section 21 lying north and east of the right of way of The Atchison, Topeka and Santa Fe Railway Company, sections 22 and 23, SE $\frac{1}{4}$ and W $\frac{1}{4}$ section 24, sections 25 and 26, all that part section 27 lying north and east of the right of way of The Atchison, Topeka and Santa Fe Railway Company, all that part E $\frac{1}{2}$ section 34 lying north and east of the right of way of The Atchison, Topeka and Santa Fe Railway Company, and section 35, Township 13 North, Range 11 West, New Mexico Principal Meridian, McKinley County, New Mexico, containing approximately 7,579.19 acres.

Tract (3):

All that part section 35 lying north and east of the right of way of The Atchison, Topeka and Santa Fe Railway Company, Township 14 North, Range 13 West, New Mexico Principal Meridian, McKinley County, New Mexico, containing approximately 531.25 acres.

Tract (4):

Sections 13, 15 and 23, Township 11 North, Range 10 West, New Mexico Principal Meridian, Valencia County, New Mexico, containing approximately 1,920 acres.

Tract (1) of the above-described property is hereinafter referred to as Berryhill Land, and Tracts (2), (3) and (4) of the above-described property are hereinafter referred to as Elkins Land.

2. The Berryhill Defendants, jointly and severally, represent and warrant that they have acquired, by mesne conveyances, all the right, title, interest and estate in and to the Berryhill Land conveyed to W. A. Berryhill by Santa Fe Pacific by its deed dated January 16, 1948, and are now the owners of the Berryhill Land, subject to the following:

(1) Right, title and interest of Santa Fe Pacific under and pursuant to its mineral reservation hereinafter set forth.

(2) Any easements or licenses of record.

(3) Rights of the public in and to any public roads or highways.

(4) The following three mortgages to Mutual Life Insurance Company of New York, a New York corporation, covering property in McKinley County, New Mexico:

(a) A mortgage dated March 8, 1948, securing a loan in the principal amount of \$17,000, covering Sections 19, 23, 25, 33, 35, and the E $\frac{1}{2}$ of the E $\frac{1}{2}$ of Section 27, Township 13 North, Range 10 West, New Mexico Principal Meridian, and other property, and recorded in McKinley County, April 2, 1948, in Book 13 of Mortgages at Page 97.

(b) A mortgage dated November 10, 1949, securing a loan in the principal amount of \$24,000 covering Sections 19, 23, 25, 33, 35, and the E $\frac{1}{2}$ of the E $\frac{1}{2}$ of Section 27, Township 13 North, Range 10 West, New Mexico Principal Meridian, and other property, and recorded in McKinley County, December 5, 1949, in Book 14 of Mortgages at Page 10.

(c) A mortgage dated March 27, 1948, securing a loan in the principal amount of \$14,000 covering Sections 1, 3, 5, 9, 11, 13, 17, 21, 29, W $\frac{1}{2}$ and W $\frac{1}{2}$ of the E $\frac{1}{2}$ of Section 15, and W $\frac{1}{2}$ and W $\frac{1}{2}$ of the E $\frac{1}{2}$ of Section 27, Township 13 North, Range 10 West, New Mexico Principal Meridian, and recorded in McKinley County, April 16, 1948, in Book 13 of Mortgages at Page 310.

(5) A mortgage or deed of trust dated June 21, 1948, to W. S. Horne, Trustee for Great Southern Life Insurance Company, Beneficiary, securing a loan in the principal amount of \$35,000 covering Sections 7, 31, and E $\frac{1}{2}$ of the E $\frac{1}{2}$ of Section 15, Township 13 North, Range 10 West, New Mexico Principal Meridian, and other property, and recorded in McKinley County, July 13, 1948, in Book 13 of Mortgages at Page 349.

3. The Elkins Defendants, jointly and severally, represent and warrant that they have acquired and own all the right, title, interest and estate in and to (a) Tracts (2) and (3) of the Elkins Land, which were conveyed by Santa Fe Pacific to Tom L. Elkins by its deed dated January 2, 1946, and (b) Tract (4) of the Elkins Land, which together with other land was conveyed by Santa Fe Pacific to the Heirs of Tom L. Elkins/Deceased, by deed dated March 21, 1950, and that they are now the owners of the Elkins Land, subject to the following:

(1) Right, title and interest of Santa Fe Pacific under and pursuant to its mineral reservation herein-after set forth.

(2) Any easements or licenses of record.

(3) Rights of the public in and to any public roads or highways.

(4) A mortgage dated September 12, 1949, to Kansas City Life Insurance Company, a Missouri corporation, securing a loan in the principal amount of \$65,000 covering Tracts (2) and (3) of the Elkins Land and recorded in McKinley County, October 21, 1949, in Book 13 of Mortgages at Page 623.

4. In each of said three deeds Santa Fe Pacific was referred to as Grantor. In the deed dated January 16, 1948, W. A. Berryhill was referred to as Grantee, in the deed dated January 2, 1946, Tom L. Elkins was referred to as Grantee, and in the deed dated March 21, 1950, the Heirs of Tom L. Elkins, Deceased, were referred to as Grantee. Each of said three deeds contains a mineral reservation reading as follows:

"Grantor expressly reserves and excepts all oil, gas, coal and minerals whatsoever, already found or which may hereafter be found, upon or under said lands, with the right to prospect for, mine and remove the same, and to use so much of the surface of said lands as shall be necessary and convenient for shafts, wells, tanks, pipe lines, rights of way, railroad tracks, storage purposes, and other and different structures and purposes necessary and convenient for the digging, drilling and working of any mines or wells which may be operated on said lands. Grantor, or its successors or assigns, will pay to Grantee, or the legal representatives, heirs, successors or assigns of Grantee, a fixed price per acre for the surface of all lands appropriated under this exception and reservation, which price shall be equal to the average price per acre paid for all the lands above described, together with the fair value of the buildings and permanent improvements, if any, on the land the surface of which is so appropriated. If the parties cannot agree upon such fair value it shall be fixed by three appraisers, of whom each party shall appoint one and the two so appointed shall appoint the third."

5. Pursuant to a contract with the Atomic Energy Commission, Anaconda Copper Mining Company, hereinafter referred to as Anaconda, is engaged in the construction of a plant and facilities in the vicinity of Grants, New Mexico, hereinafter referred to as Anaconda Plant, for the treatment of uranium-bearing ores for the recovery of uranium oxide (U_3O_8), or other oxides of uranium, owned by Anaconda or purchased from others, and Santa Fe Pacific has agreed to enter into a contract with Anaconda covering the mining and delivery of uranium-bearing ores owned by Santa Fe Pacific in the vicinity of Grants, New Mexico, that contains not less than 0.10% of U_3O_8 and are amenable to treatment at said plant, and the sale thereof to Anaconda at prices fixed by the Atomic Energy Commission whenever the controversy involved in this suit with respect to the ownership of uranium-bearing ore which

may be found upon or under the Berryhill and Elkins Lands is disposed of, and, therefore, Santa Fe Pacific is desirous of settling such controversy promptly in order that it may proceed with the necessary arrangements for mining, delivering and selling to Anaconda said uranium-bearing ore.

6. The Berryhill Defendants and the Elkins Defendants will promptly enter into a trust agreement with The International Trust Company, Denver, Colorado, hereinafter referred to as Trustee, under which the Trustee will receive the amounts hereinafter provided to be paid by Santa Fe Pacific and will hold and dispose of the same as directed by said Defendants and will furnish to Santa Fe Pacific an executed copy of such trust agreement.

7. Santa Fe Pacific agrees to pay to the Trustee the sum of Ninety thousand and no/100 (\$90,000.00) Dollars, concurrently with the entry of the judgment and decree hereinafter provided for, and thereafter three percent (3%) of the amounts paid to Santa Fe Pacific by Anaconda, or any other licensee of the Atomic Energy Commission, or by said Commission itself, or by any other purchaser, for uranium-bearing ore mined from the Berryhill and Elkins Lands by Santa Fe Pacific.

In the event Santa Fe Pacific leases or conveys to any third party or parties any of its uranium-bearing ore mining rights in the Berryhill and Elkins Lands, the lease or conveyance shall be made subject to the foregoing provisions of this paragraph and the 3% payments shall be computed upon the gross price paid to any lessee or grantee by any purchaser of the uranium-bearing ore mined and sold by any such lessee or grantee.

Said proposed contract between Santa Fe Pacific and Anaconda also provides Santa Fe Pacific may, at its option and at its own expense, without charge by Anaconda, remove from the tailings produced at the Anaconda Plant a quantity thereof equivalent to the amount of tailings attributable to the tonnage of uranium-bearing ore delivered to Anaconda by Santa Fe Pacific. Whether such tailings will be of any commercial value is not now

known, but if Santa Fe Pacific sells any portion thereof, it shall pay to the Trustee three percent (3%) of the amount received by Santa Fe Pacific for the tailings in place in the dump, and if Santa Fe Pacific performs or causes to be performed any work in connection with the removal of the tailings from the dump and/or loading them in trucks or railroad cars, or in transporting them by truck to another point, the cost of performing such work shall be deducted from the price received by Santa Fe Pacific for such tailings in determining the amount received by Santa Fe Pacific for such tailings..

It is agreed, however, that Santa Fe Pacific, or any company affiliated therewith, may itself use any of such tailings in its or their operations without making any payment to the Trustee with respect to any tailings so used.

No percentage payment shall be made with respect to amounts received by Santa Fe Pacific (1) for tailings attributable to uranium-bearing ore produced from lands other than the Berryhill and Elkins Lands, or (2) for development or exploration work, or for haulage, such as those referred to in Paragraph (3), entitled "Allowances", of Section 60.5a of Domestic Uranium Program Circular 5, Revised, effective March 1, 1951, issued by the Atomic Energy Commission, or (3) as a bonus for initial production of uranium-bearing ores from new mines, such as that referred to in Domestic Program Circular 6 dated June 27, 1951, issued by the Atomic Energy Commission, and any such amounts received by Santa Fe Pacific shall be excluded from the amounts on which the 3% payments provided for by this Paragraph 7 are computed.

8. As between Santa Fe Pacific and the

Berryhill and Elkins Defendants, Santa Fe Pacific shall be the sole judge as to the extent, method and character of exploration, development or mining work upon or under the Berryhill and Elkins Lands, and the only interest of the Berryhill and Elkins Defendants and the only obligation of Santa Fe Pacific with respect to uranium-bearing ore upon and under the Berryhill and Elkins Lands is that, in addition to the \$90,000 payment provided for by Paragraph 7 hereof, there shall also be made the 3% payments provided for by said paragraph 7, if and when said ore is mined, removed and sold. Such payments shall constitute full payment for use of or damage to the Berryhill and Elkins Lands for roads and for prospecting, exploration, development and mining work pertaining to uranium-bearing ore, and for any improvements damaged or destroyed in the performance of any such work; and Santa Fe Pacific shall be under no obligation to level off or in any other manner restore the surface so used or damaged upon abandonment of mining operations pertaining to uranium-bearing ore or to any other ore or mineral. As to prospecting, exploratory, development or mining work pertaining to any ore or mineral, other than uranium-bearing ore, the provisions of the mineral reservation set forth in Paragraph 4 hereof covering payment of compensation for use of land or for damage to or destruction of improvements shall apply thereto.

9. Santa Fe Pacific shall furnish the Trustee, within thirty (30) days from the date it receives payment for any uranium-bearing ore taken from the Berryhill and Elkins Lands, a statement showing separately the total purchase price received for such ore taken from:

(1) Sections 7 and 31, and E½E½ section 15,

Township 13 North, Range 10 West,
New Mexico Principal Meridian,
McKinley County, New Mexico.

- (2) Sections 23 and 25, E½E½ section 27,
and sections 33 and 35, Township 13
North, Range 10 West, New Mexico
Principal Meridian, McKinley County,
New Mexico, and
- (3) All the remaining Berryhill and Elkins
Lands.

Concurrently with furnishing such statements,
Santa Fe Pacific shall make the 3% payments to the
Trustee provided for in Paragraph 7 hereof; and Santa
Fe Pacific hereby authorizes all purchasers of uranium-
bearing ore produced from the Berryhill and Elkins Lands,
whose names are shown on said statements, to permit the
Trustee to verify from their records the amount of the
purchase price shown on such statements.

10. The Berryhill and Elkins Defendants
agree to procure instruments satisfactory to counsel
for Santa Fe Pacific, executed by the mortgagees and
the Trustee under said deed of trust referred to in
Paragraphs 2 and 3 hereof, which either (1) will re-
lease completely the portions of the Berryhill and
Elkins Lands from the said mortgages and deed of trust,
or (2) will release any lien created by said mortgages
or deed of trust that might be claimed to have attached
to any minerals existing upon or beneath the surface of
the Berryhill and Elkins Lands or to the mining, removal
or sale thereof by Santa Fe Pacific, its successors or
assign.

11. This stipulation and agreement is en-
tered into by Josephine Maude Elkins, as Guardian of the
Estates of Jack Lee Elkins, Keith Lowell Elkins, Lynn
Embert Elkins, David Phil Elkins and Frederick Vernon
Elkins, minors, subject to the approval of the District
Court of McKinley County, New Mexico, in the guardianship

proceedings there pending as case No. 7761, and Josephine Maude Elkins hereby agrees promptly to present to said court a petition, satisfactory to counsel for Santa Fe Pacific, for an order approving and authorizing execution of this stipulation by her, as guardian of the estates of said minors.

12. Promptly after (1) the instruments provided for by paragraph 10 hereof are obtained and filed for record in the county or counties wherein the portions of the Berryhill and Elkins Lands covered by the mortgages and deed of trust therein referred to are situated and copies of such instruments, duly certified by the County Clerk, are furnished Santa Fe Pacific, (2) the order of the District Court of McKinley County, New Mexico, provided for by paragraph 11 hereof is obtained and a copy thereof, duly certified by the clerk of said Court, is furnished Santa Fe Pacific, and (3) the trust agreement with the Trustee provided for by paragraph 6 hereof is executed and an executed copy thereof furnished Santa Fe Pacific, the suit brought by Santa Fe Pacific against the Berryhill Defendants, now pending as case No. 8129 in the District Court of McKinley County, New Mexico, shall be dismissed without prejudice upon stipulation to be entered into by counsel, and a judgment and decree shall be entered in the above-entitled case in the form hereto attached.

13. Concurrently with the entry of the judgment and decree in the above-entitled case provided for by paragraph 12 hereof, Santa Fe Pacific shall pay to the Trustee, The International Trust Company, Denver, Colorado, the sum of \$90,000.

14. The rights and obligations of Santa Fe Pacific hereunder may be assigned in whole or in part

to any wholly owned or controlled subsidiary of The Atchison, Topeka and Santa Fe Railway Company, owner of all of the outstanding capital stock of Santa Fe Pacific, but no such assignment shall operate to release or relieve Santa Fe Pacific from any obligation or undertaking hereunder which its assignee shall fail to fulfill or perform, and said assignee shall be substituted for Santa Fe Pacific as to any rights and obligations so assigned.

DATED this 4th day of April, 1952.

SANTA FE PACIFIC RAILROAD COMPANY

BY C. B. McClelland
C. B. McClelland, Land Commissioner

Duane Berryhill
Duane Berryhill

Nelda Berryhill
Nelda Berryhill

Volten S. Tietjen
Volten S. Tietjen

Theresa Tietjen
Theresa Tietjen

Wallace Adrian Berryhill
Wallace Adrian Berryhill

Gladdys Tietjen Berryhill
Gladdys Tietjen Berryhill

Thomas Jefferson Tietjen
Thomas Jefferson Tietjen

Edna Tietjen
Edna Tietjen

Josephine Maude Elkins
Josephine Maude Elkins, Individually
and as Guardian of the Estates of
Jack Lee Elkins, Keith Lowell Elkins,
Lynn Embert Elkins, David Phil
Elkins and Frederick Vernon Elkins,
Minors.

STATE OF NEW MEXICO
COUNTY OF BERNALILLO.....SS

On this 4th day of April, 1952, before me personally appeared C. B. McClelland, to me personally known, who being by me duly sworn, did say that he is Land Commissioner of SANTA FE PACIFIC RAILROAD COMPANY, a corporation incorporated under Act of Congress approved March 3, 1897, and that said instrument was signed and sealed in behalf of said corporation, by authority of its

board of directors, and said C. B. Clelland acknowledged said instrument to be the free act and deed of said corporation.

WITNESS my hand and seal on this the day and year first above written.

Nora Carrara
Nora Carrara, Notary Public

(SEAL)
MY COMMISSION EXPIRES:
December 5, 1954

STATE OF NEW MEXICO
COUNTY OF BERNALILLO.....SS

On this 4th day of April, 1952, before me personally appeared Duane Berryhill and Nelda Berryhill, his wife, Volten S. Tietjen and Theressa Tietjen, his wife, Wallace Adrian Berryhill and Gladdus Tietjen Berryhill, his wife, Thomas Jefferson Tietjen and Edna Tietjen, his wife, and Josephine Maude Elkins, Individually and as Guardian of the Estates of Jack Lee Elkins, Keith Lowell Elkins, Lynn Embert Elkins, David Phil Elkins and Frederick Vernon Elkins, Minors, to me personally known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their own free act and deed.

WITNESS my hand and seal on this the day and year first above written.

Nora Carrara
Nora Carrara, Notary Public in and
for Bernalillo County, New Mexico.

(SEAL)
MY COMMISSION EXPIRES:
December 5, 1954

E. C. Iden

E. C. Iden

Bryan G. Johnson

Bryan G. Johnson

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Albuquerque, New Mexico

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K. S. Outlaw

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